

**UNITED STATES
PATENT AND TRADEMARK OFFICE**



Patent Public Advisory Committee
Quarterly Meeting

International Update

Shira Perlmutter

Chief Policy Officer and Director for International Affairs
Office of Policy and International Affairs

February 1, 2018

UNITED STATES
PATENT AND TRADEMARK OFFICE



Topics

- International Issues
 - Investigation under Section 301 of the Trade Act
 - Committee on Foreign Investment in the United States (CFIUS), and proposed amendments
- Brief Updates
 - Proposed Hague Convention on the Recognition and Enforcement of Foreign Judgements
 - Brazil's proposal to address its backlog.
- Industrial Design Forum (ID5)

301 Investigation on China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation:

- Section 301 of the Trade Act authorizes “**discretionary action**” by the U.S. Government if USTR determines that “an act, policy, or practice of a foreign country is **unreasonable or discriminatory** and **burdens or restricts** United States commerce.”
- One year to conclude investigation.

China's policies with respect to IP, technology, and innovation are at the core of the investigation

- President's Memorandum: USTR to determine whether to investigate any of China's laws, policies, practices, or actions that may be unreasonable or discriminatory, and that may be harming American IP rights, innovation, or technology development.

Federal Register Notice

(Vol. 82, No. 163/Thursday, August 24, 2017)

“The Chinese government’s acts, policies, and practices take many forms. The investigation initially will consider the following specific types of conduct:

First, the Chinese government reportedly uses a variety of tools, including opaque and discretionary administrative approval processes, joint venture requirements, foreign equity limitations, procurements, and other mechanisms to regulate or intervene in U.S. companies’ operations in China, in order to **require or pressure the transfer of technologies and intellectual property to Chinese companies.**”

“Second, the Chinese government’s acts, policies and practices reportedly **deprive U.S. companies of the ability to set market-based terms** in licensing and other technology-related negotiations with Chinese companies and undermine U.S. companies’ control over their technology in China. **For example, the Regulations on Technology Import and Export Administration [TIER]** mandate particular terms for indemnities and ownership of technology improvements for imported technology, and other measures also impose non-market terms.”

Federal Register Notice, continued

“Third, the Chinese government reportedly directs and/or unfairly facilitates the **systematic investment in, and/or acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property** and generate largescale technology transfer in industries deemed important by Chinese government industrial plans.”

“Fourth, the investigation will consider whether the Chinese government is conducting or supporting **unauthorized intrusions into U.S. commercial computer networks or cyber-enabled theft of intellectual property, trade secrets, or confidential business information**, and whether this conduct harms U.S. companies or provides competitive advantages to Chinese companies or commercial sectors.”

China's Technology Import and Export Regulations (TIER)

Article 24:

The licensor of a **technology import contract** shall warrant that it is the lawful owner of the technology ...If the use of the technology provided by the licensor to the licensee of a technology import contract in accordance with the contract infringes upon the lawful rights and interests of another person, the responsibility **shall be borne by the licensor.**"

Article 27:

During the valid term of **a technology import contract**, the fruits of **improvements** to the technology **shall belong** to the party making the improvements.

Hearing testimony and submissions

- U.S. businesses are concerned that China's licensing regime (TIER in particular) is discriminatory and unreasonable.
- Chinese government-affiliated business associations assert that TIER is "neutral in nature" because "either Chinese companies or US companies can be the licensor."*
- They also seek to justify TIER on the basis of the "weak position" of licensees in technology transfer negotiations** and the need to protect certain industries for national security reasons.***

* Submission by China Chambers of Commerce for Import and Export of Machinery and Electronic Products (CCCME)

** Submission by China Chamber of International Commerce.

***Hearing transcript.

CFIUS

The Committee on Foreign Investment in the United States (CFIUS)

- CFIUS is an inter-agency committee authorized to review **transactions** that could result in **control of a U.S. business by a foreign entity** in order to determine the effect of such transactions on the **national security** of the United States.
- CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (FINSA) (section 721) and as implemented by Executive Order 11858, as amended, and regulations at 31 C.F.R. Part 800.

Composition of CFIUS

The Secretary of the Treasury is the Chairperson of CFIUS

Members of CFIUS include the following departments and offices:

- Departments of Treasury, Justice, Homeland Security, Commerce, Defense, State, & Energy
- Office of the U.S. Trade Representative
- Office of Science & Technology Policy

The following offices also observe and, as appropriate, participate in CFIUS's activities:

- Office of Management & Budget; Council of Economic Advisors; National Security Council; National Economic Council; & Homeland Security Council

Covered Transactions

- A “covered” foreign investment transaction refers to any merger, acquisition or takeover which results in foreign control of any entity engaged in interstate commerce in the United States.
- “Control” is defined as the power to determine, direct or decide matters affecting an entity including, but not limited to (i) the sale, lease, pledge or other transfer to the company’s assets, (ii) the dissolution of the company, or (iii) the closing or relocating of research and development facilities.

National Security

- National security is not defined, but is sufficiently broad and includes a range of concerns that fall under homeland security, including all elements of critical infrastructure of the United States.
- “Critical infrastructure” is defined as “a system or asset, whether physical or virtual, so vital to the United States that the incapacity or destruction of the particular system or asset . . . would have a debilitating impact on national security.”

CFIUS Process

1

- After accepting a filing, CFIUS has 30 days to review transaction to determine whether to clear or commence an investigation

2

- Once initiated, investigation can last up to 45 additional days to resolve national security concerns

3

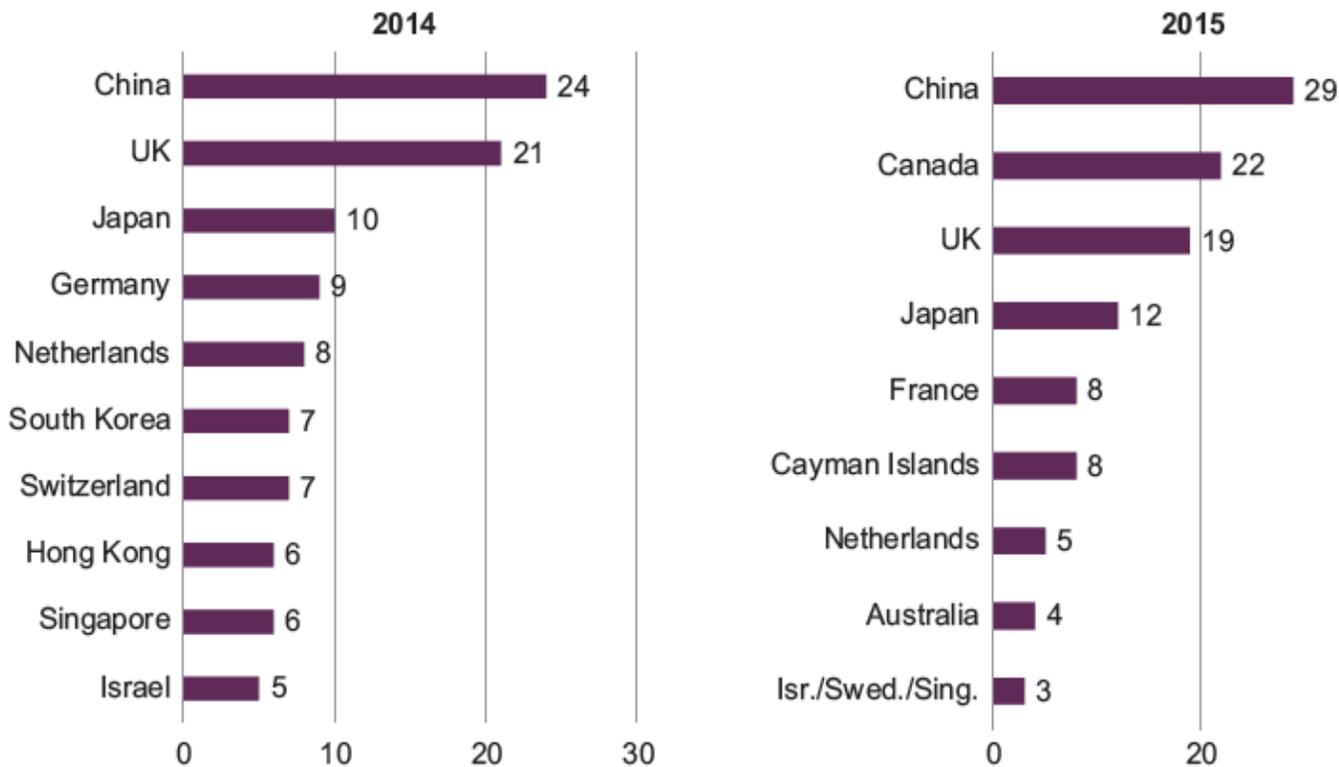
- If national security issues are not resolved at end of 45-day period, CFIUS makes a formal declaration to the President whether to clear or block the transaction

4

- The President has 15 additional days to decide whether to suspend, prohibit or impose conditions on the transaction

CFIUS Transactions

CFIUS Covered Transactions by Country (2014-2015)



Source: Committee on Foreign Investment in the United States, Annual Report to Congress, CY 2015

Industrial Design Forum (ID5)

Mary Critharis
Senior Patent Counsel

David Gerk
Attorney-Advisor

Office of Policy and International Affairs

UNITED STATES
PATENT AND TRADEMARK OFFICE



Launch of ID5

ID5 was launched in 2015 at the USPTO

- EUIPO
 - JPO
 - KIPO
 - SIPO
 - USPTO
 - + WIPO (Observer)
- 90% of Global Industrial Design Filings



ID5 INDUSTRIAL DESIGN FORUM

The logo features the text "ID5" in a large, bold, blue font, with the "5" enclosed in a red circle. To the right, the words "INDUSTRIAL DESIGN FORUM" are written in a smaller, blue, sans-serif font. Below the text is a stylized world map composed of blue and red dots, representing the global reach of the forum.



Logos of participating organizations: uspto, European Union flag, Chinese flag, Japanese flag, and WIPO logo.

UNITED STATES PATENT AND TRADEMARK OFFICE
OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
STATE INTELLECTUAL PROPERTY OFFICE OF THE PEOPLE'S REPUBLIC OF CHINA
KOREAN INTELLECTUAL PROPERTY OFFICE
JAPAN PATENT OFFICE

DECEMBER 3-4, 2015
UNITED STATES PATENT AND TRADEMARK OFFICE | ALEXANDRIA, VIRGINIA

USPTO Strategic Objective of ID5

A key mechanism for implementing global best practices benefitting U.S. innovative design applicants by effectively and efficiently protecting their designs across the globe

- ❖ Ensuring effective industrial design protection exists for designs in all technologies
- ❖ Improving consistency in design registration/examination policies and practices
- ❖ Focusing global efforts to identify the needs and challenges of the design community through stakeholder outreach and information sharing

Effective Protection For Designs In All Technologies

- **Grace Period Study**
 - ❖ Study comparing the legal regimes with regard to the availability of grace period
- **Partial Designs (claims to portions of products) as an Effective Means for Protection**
 - ❖ Study documenting the availability and provisions related to partial design protection
- **Protection of New Technological designs**
 - ❖ Study to identify legal frameworks and office practices protecting emerging technologies (GUIs, Icons, transitional/animated images, etc.)
 - ❖ Recognizing where frameworks/practices are meeting user needs as well as areas that could be enhanced

Consistency in Design Registration/Examination Policies and Practices

- **Catalogue of the View and Drawing Requirements for Designs**
 - ❖ Catalogue of drawing requirements for images or representations (so-called drawings or views).
 - ❖ This Catalog was finalized at the recent 2017 ID5 Annual Meeting and represents a concrete achievement towards harmonized design practice
- **Design priority document exchange**
 - ❖ Implementation of the WIPO Digital Access Service (DAS)
 - ❖ USPTO leadership in the ID5 has led to KIPO, SIPO, and USPTO implementation in summer of 2018, with JPO (and likely EUIPO) very soon to follow

Stakeholder Outreach and Information Sharing

Development and Maintenance of the ID5 website (www.id-five.org)

- ❖ An effective platform for communicating the on-going projects and tangible results of the ID5

Annual Compilation of Industrial Design Statistics

- ❖ Partner offices successfully developed common statistical indicators that represent data that is most important to design users
- ❖ Statistics will be utilized by the public in following design trends and developing improved filing strategies

The screenshot shows the 'ABOUT ID5' page of the Industrial Design Forum website. The header includes the ID5 logo and the text 'Industrial Design Forum'. Below the header is a navigation bar with 'ABOUT', 'PROJECTS', and 'ANNUAL MEETINGS'. The main content area is titled 'ABOUT ID5' and contains text describing the forum's composition of intellectual property offices from the EU, Japan, Korea, China, and the US. It also lists the members and the forum's mission to promote industrial design protection systems.

The screenshot shows the 'COMPILATION OF INDUSTRIAL DESIGN STATISTICS' page. The header includes the ID5 logo and the text 'Industrial Design Forum'. Below the header is a navigation bar with 'ABOUT', 'PROJECTS', and 'ANNUAL MEETINGS'. The main content area is titled 'COMPILATION OF INDUSTRIAL DESIGN STATISTICS' and contains a table with the following information:

Leading office	JIPO
Due date	Not Specified
Purpose	To develop common statistical indicators and a process to regularly exchange statistical data based on the indicators and to update or amend the indicators in order to more accurately capture the critical data of interest to the Partners and share the data with our users.
Desired outcome	Developing an agreed common statistical indicators and a process that we share up-to-date, accurate and useful data among the Partners on the ID5 Website regularly (once a year) and that date will be available for the Partners and our users.
Project Proposal	Download PDF

The page also includes a footer with 'ID5 HELP' and 'ID5 OFFICES' sections, listing the participating intellectual property offices: EUIPO, JIPO, KIPO, SIPO, and USPTO.

Questions and Comments

Shira Perlmutter

Chief Policy Officer and Director for International Affairs

(571) 272-9300

Shira.Perlmutter@USPTO.GOV



